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JOSEPH G. NASSIF

REPLY TO ST. LOUIS

February 7, 1991

Mr. Steven Siegel
Assistant Regional Counsel
U.S. Environmental Protection Agency
5CS-TUE-3
230 South Dearborn
Chicago, Illinois 60604

Mr. Alan Held
Environmental Enforcement Section
Department of Justice
Room 1541
10th and Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Gentlemen:

Following our brief meeting with Mr. Siegel last Thursday, we received EPA's written confirmation that the global settlement proposal has been rejected. We believe this to be unfortunate because from our perspective the global settlement represented a "no lose" position for the agency. Nevertheless, there are still a number of generators who want to pursue settlement further.

As we explained to Mr. Siegel, the original generator carve-out proposal reached an impasse because the agency was unwilling to budge on tilling and the 35% figure for generator participation. We pursued the global proposal because we had no reasonable choice. There did not exist then (nor does there exist now) a sufficient number of generators willing to accept the 35% carve-out without the tilling component. Additionally, we had hoped the global proposal would succeed because both of you expressed a desire for a total resolution. In any event, we could not pursue the carve-out simultaneously because many of the generators and N.L. would have felt this to be acting in bad faith.

EPA Region 6 Records Ctr.



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Following EPA's rejection of the global settlement proposal, we have canvassed again the viable generators regarding a 35% generator carve-out without tilling. Based on our review, we expect more than 60% of the total volume represented by those generators receiving the \$106 order will opt not to participate in the settlement. Many others are still reviewing options with their management. A list of the major non-settling generators and their volumetric percentages is attached for your review. We understand that concerted efforts are being made to convince the undecided generators not to join in any carve-out proposal. As a result, we need to come up with a proposal which recognizes that the settlers will have to pay up to three times their volumetric shares in order to fund the cleanup, but which still makes settlement the most attractive option.

There are two constants in Superfund settlements: protection for good faith settlers and the payment of premiums by non-settlers. In the very likely event that a number of generators will not settle initially, we will need a commitment from EPA that should any non-settler want to settle with you in the future, that a condition precedent to any settlement will be the payment of their portion of the 35% plus interest and a premium. Determining their assessment will not be difficult, and we have a number of options for fixing a premium. This approach gives some assurance to the settlers that at some point, perhaps after the carve-out portion of the cleanup is complete, they have a chance to get reimbursed for their overpayment from all non-settlers. Also, it eliminates a major disincentive to settlement, by demonstrating to all of the generators that ultimately they will have to pay their assessment with interest. The premium is necessary, as otherwise non-settlers may end up in the same or better position than those of us who perform the work. All of the above is consistent with a generator carve-out of this sort and past Superfund settlements.

Because of the large number of non-participants, we will need your help in securing de minimis participation. Without EPA's assistance the de minimis parties will have little incentive to settle because they are under no enforcement order at this point and cannot obtain contribution protection without EPA involvement.

The main aspects of the settlement would be as follows:

- (A) A Generator-Class offer to do 35% of the work with no tilling commitment whatsoever;

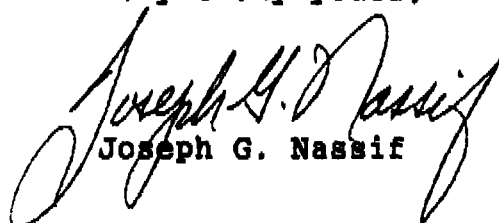
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- (B) No penalties for those committing to the proposal within five days of an agreement;
- (C) Deferral of past EPA costs and oversight costs unless the agency fails to collect them from non-settlors;
- (D) All de minimis funds go to the benefit of generator settlors and EPA will assist us in collection per the above;
- (E) Contribution protection is provided to all carve-out settlors;
- (F) Government agrees to pursue non-settlors who received the §106 Order, consistent with the conditions to settlement set forth on page 2 of this letter;
- (G) Protection for carve-out settlors in the event of a change or modification to the ROD; and,
- (H) The settling generators would be given first preference as to the tasks to be performed subject to negotiations with EPA.

We believe this approach provides maximum incentive for parties to settle sooner rather than later. Also, it will show those generators who believe that an agreement cannot be fashioned at this point, that an agreement is not only possible, but sensible.

We would like to get your thoughts on whether the above, subject to clarification, is agreeable to the EPA. We need to get something that both sides can live with so that we can begin to lobby those generators who are still on the fence. How soon can you give us a reading on this proposal? Please give me a call.

Very truly yours,


Joseph G. Nassif

Attachment
JGN:lc
28190

N.L. INDUSTRIES, ILMajor Non-Settling Generators Percentage

Johnson Controls	14.69639
Exide (ESB & General Battery)	5.04326
Ace Scrap Metal	3.91678
Allied Signal	2.63965
Sanders Lead	1.69361

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